

**Exhibit A**

Certified Translation

[Stamp of the  
Treasury Department of the  
Commonwealth of Puerto Rico]

Melba Acosta Febo, Esq.  
Secretary

August 28, 2013

**ADMINISTRATIVE DECISION NO. 13-14**

**ATTENTION: TAXPAYERS WHO HAVE A CONTRACT WITH THE COMMONWEALTH OF PUERTO RICO TO PROVIDE PROFESSIONAL, CONSULTING, ADVERTISING, PUBLIC RELATIONS, COMMUNICATIONS, LEGAL, TRAINING OR ORIENTATION, AND LOBBYING SERVICES**

**SUBJECT : CLARIFICATION OF THE SCOPE OF THE IMPOSITION OF THE SPECIAL TAX UNDER ACT NO. 48-2013**

**I. Statement of Reasons**

Article 1 of Act No. 48-2013, ("Act 48-2013") imposes a special tax equal to one point five percent (1.5%) of the total amount of every contract for professional, consulting, advertising, public relations, communications, training or orientation, and lobbying services, executed by an agency, department or instrumentality of the Commonwealth of Puerto Rico ("ELA" [*Spanish acronym*]), public corporation, as well as the Legislative Assembly and the Judicial Branch ("Special Tax").

The Special Tax must be withheld by the Treasury Department ("Department") or by the corresponding government entity at the time payment is made for the services provided under the contract. On August 9, 2013, the Department issued Central Accounting Circular Letter No. 1300-03-14 ("CC 1300-03-14") to establish the procedure for collecting the Special Tax from professional service providers. Subsequently, on August 16, 2013, the Department issued Central Accounting Circular Letter No. 1300-06-14 for the purpose of amending CC 1300-03-14 to inform that advertising spots, reimbursed expenses, and equipment or material costs that are billed to the government entity as part of a contract should be excluded from the Special Tax.



I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

On August 20, 2013, the Department issued Administrative Decision No. 13-12 ("DA 13-12") to clarify which services are subject to the Special Tax. The Department, however, has received additional inquiries related to the application of Act 48-2013. Therefore, this Administrative Decision is issued to repeal DA 13-12 and to clarify the scope of the imposition of the Special Tax under Act 48-2013.

## **II. Discussion**

Contracts to provide professional services, as defined in Act 237-2004 are subject to the Special Tax under Act 48-2013. According to Act 237-2004, the term "professional and consulting services" includes services to provide mainly the product of intellectual, creative or artistic work, or the management of highly technical or specialized skills. Every contract classified as a professional or consulting service contract under Act 237-2004, is subject to the Special Tax provided in Article 1 of Act 48-2013.

In addition, pursuant to Act 48-2013, services provided under public relations, communications, legal and lobbying contracts will be subject to the Special Tax, regardless of whether these services are considered professional or consulting services under Act 237-2004. Within the categories of service mentioned here, there are services considered to be the product of intellectual, creative or artistic work, but in other cases, they are routine services that do not involve intellectual or creative work and for that reason should not be subject to the Special Tax.

It should be noted that Act 48-2013 establishes that the Special Tax applies to any contract for professional, consulting, advertising, training or orientation services, including services described in the previous paragraph, (hereinafter "Professional and Consulting Services") executed by a governmental entity of the Commonwealth. Said Act does not specify that the Special Tax is applicable only to services provided in Puerto Rico. Therefore, every contract for Professional and Consulting Services that is signed by a government agency of any of the branches of government, is subject to the Special Tax, regardless of whether the services are provided outside of Puerto Rico or by a supplier that is not focused on providing services to industries or businesses in Puerto Rico.

## **III. Decision**

### **A. Repeal of DA 13-12**

DA 13-12 is repealed effective on the date of the issuance of this Decision.




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## **B. Services subject to the Special Tax**

This Department determines that the following services are considered professional and consulting services subject to the Special Tax provided in Act 48-2013:

- Services provided by licensed professionals, such as attorneys, doctors, nurses, pharmacists, accountants, engineers, surveyors, architects, agronomists, real estate brokers or sellers, draftsmen, real estate appraisers or evaluators, geologists, among others;
- Specialized or technical services such as computation consultants, computer programmers, financial analysts, economists, electricians, plumbers, mechanics, installers, among others;
- Personnel services such as evaluation, selection and detail of temporary personnel, whether at the administrative, managerial or professional level and the coordination of human resources;
- Lobbying services;
- All types of consulting services;
- Management services;
- Insurance services and commissions (excluding payment of insurance premiums)
- Legal services;
- Cleaning services that require specialized personnel
- Personnel training, education and orientation services;
- Consulting services of all kinds, whether provided by an individual or by a legal entity, through its employees;
- Waste collection and disposal services that require specialized personnel for removal, such as biomedical, industrial, toxic waste or asbestos removal, among others
- Services related to public relations; and
- Communications services (except for the cost of advertising spots).

In the case of communications services, there are several types of services. Among these is the creative service of the writing and design of the art of the ad or advertising strategy. In addition, a communications contract may contain commercial spot and expense reimbursement services, as well as telecommunications services (as defined in Section 4010.01(kk) of Act 1-2011, as amended). Expenses related to commercial spots, expense reimbursements and telecommunications services are not considered professional services and, therefore, should not be subject to the Special Tax of Act 48-2013.

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The Special Tax applies to contracts for the services described herein regardless of whether said services have been provided outside of Puerto Rico or whether the service supplier is a foreign entity not focused on industries or businesses in Puerto Rico. In addition, the Special Tax applies regardless of the funds or account number from which the payment to the supplier comes.

As an example, legal firm MVX, with offices in Washington DC, is engaged by a Government Agency to provide consulting services related to the application of federal laws. The services rendered by legal firm MVX are provided from the Washington offices through emails and telephone calls. The Government Agency must retain 1.5% from MVX when it sends payment for the services rendered. The amount withheld must be remitted to the Treasury Department in accordance with the provisions of CC 1300-03-14.

### **C. Services not subject to the Special Tax**

The Department determines that the following services, among others, are not considered professional and consulting services and, therefore, are not subject to the Special Tax provided for in Act 48-2013:

- Collection and waste services (except biomedical, industrial or toxic waste disposal, or waste disposal requiring specialized personnel);
- Leases;
- Security services;
- Janitorial services;
- Storage services;
- Courier or document delivery services, including transaction facilitation services;
- Premiums for life, health, property and contingency insurance contracts
- Financial services provided by financial institutions (as defined in Section 1033.17(f)(4) of the Code)
- Construction contracts (except that the design and consultation phase is considered professional services subject to the Special Tax); and
- Collection services;
- Telecommunications services (as such term is defined in Section 4010.01(kk) of Act 1-2011, as amended)
- Services provided by not-for-profit organizations

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This Department further determines that the following items will not be considered part of the "total amount of the contract" on which the withholding of the Special Tax is imposed:

- any amount that represents reimbursement of expenses;
- any amount representing the cost of an advertising spot in a contract to provide professional advertising services; or
- any amount that represents the price of any machinery, equipment, accessory or material that is provided as part of the professional service that was rendered,

However, in order to exclude these items from the "total amount of the contract" they must be duly identified in the invoice submitted by the service provider. Otherwise, the corresponding item will be subject to withholding the Special Tax.

As an example, advertising agency XYZ signs an advertising services contract with a Government Agency. Said contract includes the design of the website, the preparation of the advertising and publicity campaign and the placement of commercials on radio, press and television. Of the total amount of the contract, the amounts identified as commercial spots on radio, press and television do not constitute professional services subject to the Special Tax. Therefore, the total amount of the contract must be reduced by the portion attributable to the commercial spots, and the remainder of the contract would be subject to the one point five percent (1.5%) withholding of the Special Tax. On the other hand, if the agency places commercials directly with the press, radio or television, said contract for commercials does not constitute a professional and consulting service contract and, therefore, is not subject to at-source withholding of the Special Tax by the agency.

#### **IV. Validity**

This Administrative Decision is effective immediately.

For additional information about this Administrative Decision, you may contact the General Inquiries Section at (787)722-0216 option 8.

Cordially,



Melba Acosta Febo



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